

Justin A. Zeller, Esq.
THE LAW OFFICE OF JUSTIN A. ZELLER, P.C.
251 West 14th Street, 5th Floor
New York, NY 10011
(212) 860-9169; fax (917) 421-9387
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|-------------|
| -----X | | |
| EMILIANO SALAS, on behalf of himself | : | |
| and all other persons similarly situated, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | 07-CV-3430 |
| -against- | : | (BSJ) (AJP) |
| | : | |
| 99 CENTS FOR YOU, INC., a New York | : | |
| corporation, | : | |
| | : | |
| Defendant. | : | |
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DECLARATION OF ATTORNEY JUSTIN A. ZELLER

I, Justin A. Zeller, hereby declare under penalty of perjury that the following is true:

1. I am the attorney for the named plaintiff in this action. I make this declaration in connection with Plaintiff's Motion for Approval of Collective Action Notice, filed contemporaneously herewith.
2. The Plaintiff commenced this collective action on behalf of himself and on behalf of all others similarly situated by filing the Complaint on April 20, 2007.
3. Among other things, the Complaint seeks to recover on behalf of Plaintiff and other similarly situated current and former employees of Defendant unpaid overtime compensation of one and one-half times the regular rates at which they were employed for hours they worked in excess of forty (40) hours per week. Complaint ¶¶ 15-26.

4. By its Motion, Plaintiff requests the Court to approve and authorize mailing to potential plaintiffs of the proposed collective action notice attached hereto as Exhibit A and styled “Notice of Lawsuit with Opportunity to Join,” as well as the posting of said Notice in Defendant’s place of business. In addition, Plaintiff requests the Court to approve the proposed consent form attached hereto as Exhibit B, for use by potential plaintiffs who elect to “opt-in” to this case pursuant to FLSA §216(b), 29 U.S.C. §216(b).

5. The proposed Notice of Lawsuit with Opportunity to Join (Ex. A) complies with the requirements for FLSA collective action notices enumerated by Magistrate Judge Lisa Margaret Smith in Gjuovich v. Emmanuel’s Marketplace, Inc., 282 F. Supp 2d 101, 106-109 (S.D.N.Y 2003). Judge Smith’s opinion in Gjuovich is to my knowledge the most exhaustive judicial consideration of the contents of FLSA collection action notices.

Dated: August 24, 2007
New York, New York

s/Justin A. Zeller
Justin A. Zeller
Attorney for Plaintiff

Justin A. Zeller, Esq.
THE LAW OFFICE OF JUSTIN A. ZELLER, P.C.
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Attorney for Plaintiff

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| corporation, | : | |
| | : | |
| Defendant. | : | |
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EXHIBIT A

NOTICE OF LAWSUIT WITH OPPORTUNITY TO JOIN

Justin A. Zeller, Esq.
THE LAW OFFICE OF JUSTIN A. ZELLER, P.C.
251 West 14th Street, Floor 5
New York, NY 10011
(212) 860-9169; fax (917) 421-9387
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
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| corporation, | : | |
| | : | |
| Defendant. | : | |
| ----- | X | |

NOTICE OF LAWSUIT WITH OPPORTUNITY TO JOIN

FROM: Justin A. Zeller, Attorney for Plaintiff
Law Office of Justin A. Zeller, P.C.
251 West 14th Street, 5th Floor, New York, NY 10011
(212) 860-9169

TO: Current and Former employees of 99 CENTS FOR YOU, INC. or its successor in interest, who are or were employed within three (3) years preceding [the date of the Court's Order approving this notice], who stocked shelves, cleaned the business's premises, made deliveries, and other non-managerial and non-administrative employees who performed the same or similar work, and who did not receive overtime compensation at the rate of one and one-half time the regular rate at which they were employed for worked they performed in excess of 40 hours each week.

RE: Fair Labor Standars Act Lawsuit filed against 99 CENTS FOR YOU, INC.

I. INTRODUCTION

The purpose of this notice is to inform you of the existence of a collective action lawsuit in which you potentially are “similarly situated” to the named Plaintiff, to advise you of how your rights may be affected by this suit, and to instruct you on the procedure for participating in this suit.

The Lawsuit at issue was filed on April 30, 2007, against Defendant 99 CENTS FOR YOU, INC. in the United States District Court for the Southern District of New York. The plaintiff alleges that the Defendant violated the Federal Fair Labor Standards Act by not paying eligible employees time and one-half, or overtime compensation, for all hours worked in excess of 40 hours per week. The lawsuit is seeking back pay and double liquidated damages from the Defendant, as well as costs and attorney’s fees to compensate such eligible employees. The Defendant denies the Plaintiff’s allegations and denies that it is liable to the Plaintiff for any of the back pay, damages, costs or attorneys’ fees sought.

II. COMPOSITION OF THE COLLECTIVE ACTION CLASS

The named Plaintiff seeks to sue on behalf of himself and also on behalf of other employees with whom he is similarly situated. Specifically, the Plaintiff seeks to sue on behalf of any and all current or former employees who

- (a) have worked at 99 CENTS FOR YOU, INC. at any time within the three years preceding the present date (or who are currently employed there); and
- (b) worked in a non-managerial and non-administrative position, performing such duties as stocking shelves, cleaning the business’s premises, and making deliveries, for which they did not receive overtime compensation at the rate of time and one-half for any work they performed in excess of 40 hours each week.

III. YOUR RIGHT TO PARTICIPATE IN THE LITIGATION

If you fit within the definition above, you may join this case (that is, you may “opt-in” by completing and mailing the attached “Consent to Become Party Plaintiff” form to Plaintiff’s counsel at the following address:

PLAINTIFF’S COUNSEL
Justin A. Zeller, Esq.
251 West 14th Street, 5th Floor
New York, NY 10011
Phone: (212) 860-9169
Fax: (917) 421-9387
Email: jazeller@zellerlegal.com

The form must be sent to Plaintiff's counsel in sufficient time to have Plaintiff's counsel file it with the federal court on or before the date that is 65 days from _____ [insert the date 65 days after the date of mailing of the notice] If you fail to return the Consent to Become Party Plaintiff form to the Plaintiff's counsel in time for it to be filed with the federal court on or before the above deadline, you may not be able to participate in this lawsuit.

IV. EFFECT OF JOINING THIS ACTION

If you choose to join in this case, you will be bound by the judgment, whether it is favorable or unfavorable.

The attorney for the class plaintiffs is being paid on a contingency fee basis, which means that if there is no recovery there will be no attorney's fee. If there is a recovery, the attorney for the class will receive a part of any settlement obtained or money judgment entered in favor of all members of the class. If you sign and return the Consent to Become party plaintiff form attached to this Notice, you are agreeing to designate the class representative as your agent to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff's counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit. These decisions and agreements made and entered into by the representative Plaintiff will be binding on you if you join this lawsuit. However, the Court has retained jurisdiction to determine the reasonableness of any contingency agreement entered into by the Plaintiff with counsel, and to determine the adequacy of the plaintiff's counsel.

Furthermore, you can join this lawsuit by counsel of your own choosing. If you do so, your attorney must file an "opt-in" consent for by _____ [insert date that is 60 days from date of notice mailing].

V. TO STAY OUT OF THE LAWSUIT

If you do not wish to be a part of the lawsuit, you do not need to do anything. If you do not join the lawsuit, you will not be part of the federal claims portion of this case in any way and will not be bound by or affected by the result (whether favorable or unfavorable). Your decision not to join this case will not affect your right to bring a similar case on your own at a future time. However, claims under the Fair Labor Standards Act must be brought within 2 years of the date the claim accrues, unless the employer's violation of the law was "willful," in which case the claim must be brought within 3 years.

VI. NO RETALIATION PERMITTED

Federal law prohibits Defendant 99 CENTS FOR YOU, INC. from discharging or in any other manner discriminating against you because you "opt-in" to this case, or have in any other way exercised your rights under the Fair Labor Standards Act.

VII. YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to join this suit, and agree to be represented by the named Plaintiff through his attorney, your counsel in this action will be:

Justin A. Zeller, Esq.
THE LAW OFFICE OF JUSTIN A. ZELLER, P.C.
251 West 14th Street, 5th Floor
New York, NY 10011
(212) 860-9169; fax (917) 421-9387

VIII. COUNSEL FOR DEFENDANT

The counsel for Defendant 99 CENTS FOR YOU, INC., is:

Kousoulas & Associates
41 Madison Ave. 40th Floor, Suite 4000
New York, NY 10010
(212) 509-2566

IX. FURTHER INFORMATION

Further information about this Notice, the deadline for filing a Consent to Become Party Plaintiff, or answers to questions concerning this lawsuit may be obtained by writing or phoning the Plaintiffs' counsel at the telephone number and address stated in Paragraph 6 above.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE FEDERAL DISTRICT COURT, HONORABLE ANDREW J. PECK. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFF'S CLAIMS OR THE DEFENDANT'S DEFENSES.

DATED: _____, 2007

HONORABLE ANDREW J. PECK

U.S.M.J.

Justin A. Zeller, Esq.
THE LAW OFFICE OF JUSTIN A. ZELLER, P.C.
251 West 14th Street, 5th Floor
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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| corporation, | : | |
| | : | |
| Defendant. | : | |
| ----- | X | |

EXHIBIT B

CONSENT TO BECOME PARTY PLAINTIFF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| corporation, | : | |
| | : | |
| Defendant. | : | |
| -----X | | |

CONSENT TO BECOME PARTY PLAINTIFF

By my signature below, I hereby authorize the filing and prosecution of the above styled Fair Labor Standards Act action in my name and on my behalf by the above representative Plaintiff and so designate the collective class representative as my agent to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with the Plaintiff's counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit.

Printed Name

Signature

Street Address

Telephone

City, State, Zip code

Date

PLEASE RETURN THIS FORM FOR FILING WITH THE COURT BY _____
2007

TO:

Justin A. Zeller, Esq.
THE LAW OFFICE OF JUSTIN A. ZELLER, P.C.
251 West 14th Street, 5th Floor
New York, New York 10011
(212) 860-9169; (Fax)(917) 421-9387
Attorney for Plaintiff